IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23/12/2004

CORAM

THE HONOURABLE Mr.JUSTICE A.K.RAJAN

WRIT PETITION NO.11767 of 1999

T.Veeran ... Petitioner

-Vs-

1.The Commissioner of
Municipal Administration,
Chepauk, Chennai-600 005

2.The Regional Director of
Municipal Administration,
Madurai Region,
Race Course Colony Road,
Madurai-625 002

3.The Commissioner,
Melur Municipality,
Madurai District ... Respondents

Writ petition filed under Article 226 of the Constitution of India praying to issue writ of certiorarified mandamus calling for the records pertaining to the order of the third respondent passed in his proceedings Na.Ka.No.3439/98/C1, dated 29.01.1999 and quash the same and consequently directing the respondents to permit the petitioner to continue in service as "Sanitary Worker" in the office of the third respondent till 31.7.2006 to pay him the salary and all other attendant benefits for the period from 1.2.1999.

!For petitioner ...Mr.A.Palaniappan

^For respondents ...Mr.R.Kanniappan-GA.

:ORDER

The petitioner prays for the issuance of a writ of certiorarified mandamus calling for the records pertaining to the order of the third respondent passed in his proceedings Na.Ka.No.3439/98/C1, dated 29.01.1999 and quash the same and consequently directing the respondents to permit the petitioner to continue in service as "Sanitary Worker" in the office of the third respondent till 31.7.2006 to pay him the salary and all other attendant benefits for the period from 1.2.1999.

2. The petitioner was working as Sanitary Worker in the office of the third respondent from 01.07.1967. Since he has no school education, his date of birth was not known to him. After coming into force of the rules relating to entries regarding the date of birth in the service book, he was referred to the Government Hospital, Melur for ascertaining his age. Accordingly, the Civil Assistant Surgeon, Government Hospital, Melur issued age certificate on 12.5.1977, certifying that his age was between 30 and 32 years by that time. Therefore, the authority has taken his date of birth as 15.07.1946.

3. While that be the case, suddenly his date of birth has been altered in the service book as 15.01.1939 instead of 15.07.1946. This has been challenged in view of the audit report, which has pointed out that the petitioner was employed earlier in the Municipality and hence, his date of birth has been corrected as 15.01.1939 and on that basis, he was superannuated on 31.01.1999. Therefore, the present writ petition is filed challenging the order of superannuation, which is violative of the right.

4. In the counter affidavit it is stated that he had joined in the then Melur Town Panchayat as temporary drain cleaner on 01.08.1960 and at that time, a service roll was opened by the then Executive Officer. In that service roll, it is stated that his date of birth was entered as 15.01.1939 and therefore, his date of birth was corrected in his service book. Accordingly, he was terminated from his service on 31.1.1999.

5. Learned counsel for the petitioner submits that as early as on 8.4.1999, legal notice has been issued to the third respondent stating that his date of birth has been corrected without informing him by notice, which is illegal and for that no reply was given to him. Learned counsel further states that the third respondent is not the permissible authority to correct the date of birth of the petitioner as 15 .01.1939 instead of 15.07.1946. This contention of the learned counsel for the petitioner is acceptable, even assuming that there is a different date of birth as entered in the service book, it cannot be corrected without giving notice to the petitioner.

6. Learned counsel further submits that the service register maintained by the department in the name of Veeran, where the date of birth was entered as 15.1.1939. It is possible that both these persons may be the different persons or it may also be possible that doctor certificates relate to one and the same person. Whatever be that, his date of birth is concerned; it has been corrected without notice. On the other hand, if the real date of birth of the petitioner is 15.7.19 46, he cannot be terminated from his service on 31.01.1999.

7. Under those circumstances, the only option to this court to direct the respondents to conduct enquiry and fix the date of birth of the petitioner. This exercise shall be completed within one month from today. If the petitioner is aggrieved by the enquiry order, it is always open to him to challenge the same before the appropriate forum. It is made clear that if the respondents do not complete the enquiry within the stipulated one month time from today, the petitioner shall be entitled to reinstate to the service. The

petitioner shall also co-operate with the employer. Writ petition is disposed of with the above observations. No costs.

Index:Yes
Website:Yes

tsv.

To

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